Supreme Court, U. S.
FILED
AUG 26 1980
MICHAEL RODAK, JR., CLERK

NO. 79-2040

UNITED STATES SUPREME COURT

OCTOBER TERM 1980

RICHARD F. PACILEO, SHERIFF,
Petitioner,
vs.
JAMES DEAN WALKER,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF CALIFORNIA

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LAW OFFICE OF
GERVAIS AND GEANDROT

PAUL E. GERVAIS
ROBERT W. GEANDROT
Attorneys for Respondent

P.O. Box 1356
South Lake Tahoe, California
95705
(916) 541-2916

TABLE OF CONTENTS

	PAGE
OPINION BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	2
ISSUES PRESENTED	2
ARGUMENT	3
CONCLUSION	17

TABLE OF AUTHORITIES CITED

PAGE

Cooper v Pate
(1964) 378 U.S. 546..... 5

Finney v Arkansas Board of
Corrections
(8th Circuit 1974) 505 F2d..... 6

Finney v Arkansas Board of
Corrections
(8th Circuit 1974) 505 F2d
194,200..... 10

Finney v Hutto
(E.D. Arkansas 1976) 410 FS 251..... 6

Finney v Hutto
(8th Circuit 1977) 548 F2d 740..... 6

Finney v Mabry
(E.D. Arkansas 1978) 458 FS720.....7,10

Hutto v Finney
(1978) 437 U.S. 678.....7,10

Holt v Hutto
(E.D. Arkansas 1973) 363 FS 194..... 6

Holt v Sarver
(E.D. Arkansas 1969) 300 FS 825..... 6

Holt v Sarver
(E.D. Arkansas 1970)
309 FS 362, 383.....6, 14, 15

Holt v Sarver
(8th Circuit 1971) 442 F2d 304..... 6

In Re Hunt
(E.D. Michigan 1967) 267 R.
Supp 112, 117.....11, 12

TABLE OF AUTHORITIES CITED

PAGE

In Re Riddle
57 Cal, 2d 842, 22 California
Reporter 472, 372 P2d 304..... 4

Johnson v Mathews
(D.C. 1950) 182 F2d 677, 684, 686..12, 13

Michigan v Doran
(1978) 439 U.S. 282..... 5

Ramos v Lamm
485 FS 122, 168..... 14

Sweeney v Woodall
(1952) 344 U.S. 86.....5, 7, 8, 11,
12, 13

U.S. ex. rel Frisbee v Rapone
(1978) 449 FS 509..... 4

Yick Wo v Hopkin
(1886) 118 U.S. 356..... 4

AUTHORITIES

United States Constitution
14th Amendment.....3, 11

United States Constitution
8th Amendment.....3, 11

United States Constitution
Article IV §2.....8, 11

CODES

United States Code
42 §1983.....3, 4

United States Code
Title 28 §2254..... 8

NO. 79-2040

UNITED STATES SUPREME COURT

OCTOBER TERM 1980

RICHARD F. PACILEO, SHERIFF,	)
	)
Petitioner,	)
	)
vs.	)
	)
JAMES DEAN WALKER,	)
	)
Respondent.	)
	)

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICE OF THE UNITED STATES SUPREME COURT:

Respondent, JAMES DEAN WALKER, respectfully responds to the petition of RICHARD F. PACILEO for a Writ of Certiorari.

OPINION BELOW

The opinions of the California Supreme Court staying the extradition of Respondent, JAMES DEAN WALKER, and denying a rehearing are properly set out in Petitioner's brief, Appendices A and B respectively.

JURISDICTION

Respondent agrees that this Court has jurisdiction to consider the judgement or decree of the Supreme Court of California filed on April 9, 1980, if it so desires and deems appropriate and necessary.

STATEMENT OF THE CASE

Respondent concurs with the facts set forth by the Petitioner in his brief.

ISSUES PRESENTED

While in the context of an interstate extradition proceeding, the courts of the "asylum" state have jurisdiction to determine the unconstitutionality of the prison system of the "demanding" state by:

1. Affording full faith and credit to a Federal court decisions which have so found.
2. Conducting an evidentiary hearing to so determine.

Respondent submits that said petition should be denied on the following

grounds:

1. If the Respondent is returned to the State of Arkansas pursuant to its extradition request, Respondent faces death or great bodily injury.

2. The Arkansas State Prison System is unconstitutional, by law, as being in violation of the 8th Amendment to the United States Constitution in that said system inflicts cruel and unusual punishment. If returned to Arkansas, Respondent will be denied his constitutional rights and his civil rights under 42 USC §1983 will be violated.

ARGUMENT

Equal Rights & 42 USC §1983

The 14th Amendment to the United States Constitution declares that no state shall deny to any person within its jurisdiction the equal protection of the laws. Respondent is clearly within California's jurisdiction, being housed in a county jail within its confines. The 8th Amendment prohibits cruel and unusual treatment. Respondent, like any other citizen,

has a right to the equal protection of the laws to be protected against such treatment; and California has a sovereign duty to protect that right. California is thereby prohibited from aiding and abetting the infliction of cruel and unusual punishment upon it's citizens, the Respondent, by sending Respondent or allowing him to be taken back to Arkansas. These rights apply no less to a prisoner/fugitive held for extradition, than it does to free citizens or aliens. Yick Wo v Hopkins (1886) 118 U.S. 356. In Re Riddle 57 Cal 2d 842, 22 California Reporter 472, 372 P2d 304.

The civil rights of Respondent will be violated by his return to an unconstitutional prison system, under 42 USC §1983. This section protects against deprivation of "any rights, privileges, or immunites secured by the Constitution and laws". Certainly the Constitution protects against cruel and unusual treatment or punishment. U.S. ex. rel. Frisbee v Rapone (1978) 449

FS 509, Cooper v Pate (1964) 378 US 546.

Sweeney v Woodall - Michigan v Doran

Petitioner contends that this Court's decision in Sweeney vs. Woodall, (1952) 344 U.S. 86 is controlling in this case. This contention is erroneous for Sweeney stands for the proposition that a federal or state court of any asylum state cannot review a prisoner's petition for habeas corpus if the prisoner does not allege and/or prove that his rights in the demanding state may not be fully protected.

The reasoning behind Sweeney and Michigan v Doran, (1978) 439 U.S. 282 upon which Petitioner relies would appear to be two-fold: 1) An effort to promote and protect comity between states, and 2) a practical rational that it would be unfair, inconvenient, and economically burdensome for witnesses and attorneys from the demanding state to be required to travel to and defend in the asylum state.

First, we must assume that the courts of the asylym state will be fair and impartial, having no personal knowledge or interest in the Respondent. If, in fact, any possible bias or outside pressure exists, it would be upon the courts of the demanding state, from which the fugitive escapted. Secondly, in the instant case, Respondent's case does not require an evidentiary hearing, with its ramifications upon the demanding state. Respondent merely asks that the decisions of the Federal Courts and this Court, be given full faith and credit.

Holt v Sarver (E.D. Arkansas 1969) 300 FS 825; Holt v Sarver (E.D. Arkansas 1970) 309 FS 362; Holt v Sarver (8th Circuit 1971) 442 F2d 304; Holt v Hutto (E.D. Arkansas 1973) 363 FS 194; Finney v Arkansas Board of Corrections (8th Circuit 1974) 505 F2d ; Finney v Hutto (E.D. Arkansas 1976) 410 FS 251; Finney v Hutto

(8th Circuit 1977) 548 F2d 740; Hutto v Finney (1978) 437 U.S. 678; and Finney v Mabry (E.D. Arkansas 1978) 458 FS 720.

Thus, by its terms Sweeney clearly suggests that the instant case is distinquishable if Respondent before the California Supreme Court, pleaded and proved allegations contained in his petition that his rights would not, or could not, be fully protected by the courts of the demanding state. This apparently was done by Respondent, for such allegations were contained in his Petition for a Writ of Habeas Corpus before the California Supreme Court; (Exhibits B,C,D,E,F and G of Respondent's Petition for Writ of Habeas Corpus in the California Supreme Court, CRIM. #21422, are hereby incorporated by reference) implicitly acknowledged by that court's issuing order for a hearing.

Further, and in regard to the above quoted lanquage from Sweeney, the court in that case felt it was constrained from

granting the fugitive his requested habeas corpus relief by §2254 of Title 28 of the U.S.C., which was and is Congress' implementing legislation for Article IV, §2 of the Constitution. However §2254(b) of Title 28 of the U.S.C. provides:

"An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgement of a state court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the state or that there is either an absence of available state corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner." (emphasis added)

The application of this section is ably expressed in Justice Frankfurter's concerning opinion in Sweeney, found at 344 U.S. 91:

"Even so, it is appropriate to emphasize that in this case there is no sugg-

estion in the application for habeas corpus that the prisoner would be without opportunity to resort to the courts of Alabama for protection of his constitutional rights upon his return to Alabama. We cannot assume unlawful action of the prison officials which would prevent the petitioner from invoking aid of the local courts nor readily open the door to such a claim. Our federal system presupposes confidence that a demanding state will not exploit the action of an asylum state by indulging in outlawed conduct to a returned fugitive from justice."

As indicated earlier, Respondent, has shown the California Supreme Court that he faces death or great bodily injury if he is returned to Arkansas. (Exhibits B,C,D,E,F and G of Respondent's Petition for Writ of Habeas Corpus in the California Supreme Court, CRIM. #21422, are hereby incorporated by reference)

Thus, Respondent has shown "the existence of circumstances rendering such process ineffective to protect the rights of the prisoner". The vindictive, revengeful hostility displayed in Arkansas, throughout Respondent's tenure in prison, demonstrates dramatically the danger to his life if returned.

In this case our Federal system does not presuppose confidence in the state of Arkansas' prison system, for in Finney v Arkansas Board of Correction, 505 F2d 194, 200, (8th Circuit 1974), it was held that this state's prison system was constitutionally defective. A subsequent federal decision demonstrates that this prison system is still constitutionally defective. Finney v Marby (E.D. Arkansas, 1978) 458 F. Supp. 720. Indeed, this court itself noted the unconstitutionality of Arkansas' prison system in Hutto v Finney, 437 U.S. 678 (1978).

Moreover, in this case unlawful

action of the prison officials of Arkansas can be assumed which would prevent Respondent from involving the aid of local courts, for one prison official has expressed his desire to kill Respondent. (Exhibits B,C, D,E,F and G of Respondent's Petition for Writ of Habeas Corpus in the California Supreme Court, CRIM. #21422, are hereby incorporated by reference). Obviously, a dead man cannot pursue his constitutional remedies.

Sweeney presents a constitutional conflict between fundamental considerations of humanity and decency which are reflected in the Bill of Rights and the constitutional purposes as articulated in Article IV, §2 of the Constitution. In Re Hunt, (E.D. Michigan 1967) 276 R Supp. 112, 117 (E.D. Michigan 1967). That is to say, should Respondent's interests as quaranteed by the Bill of Rights - and notably the 8th Amendment - be considered subordinate to that of promoting comity

and cooperation between the states? Should life itself be placed below mere state convenience? Clearly the answer is obvious: Respondent's interest should prevail.

The trend of decisions from this court have indicated that: "that the Supreme Court 'within the last half-century, has dealt increasingly with state administration of justice in constitutional terms.'" In Re Hunt, supra, at 117. Moreover, two eminent jurists have articulated their dissent to the consequences that Respondent will face if the dictates of Sweeney are followed.

One jurist, Judge Bazelon,stated in Johnson v Mathews, (D.C. 1950) 182 F 2d 677, 684, that:

> "Unless the Constituion is read as a whole, there is grave danger that the extradition process will be executed in unduly mechanistic fashion and in complete disregard of the fundamental considerations of humanity and decency which are reflected in the Bill of Rights. Certainly the interest of the various governments of our federal system in

> the orderly workings of the extradition machinery is a factor of moment. And in such interest, it may ordinarily be desirable to limit the inquiry on habeas corpus to the three or four traditional questions posed in such cases. But where one constitutional purpose must be weighed against another one promoting efficiency and comity between states, the other protecting fundamental rights of the individual against state infringement our system of government will be better served by assessing greater weight to the latter. Serious doubt concerning the effectiveness of future quarantees of such fundamental rights ought not to be resolved by speculation or presumption that somehow, somewhere, but not here, some court will be able to prevent a repetition of past abuses."

Indeed, during the course of his dissent, Judge Bazelon noted the obvious inadequacy of a extradited prisoner's habeas corpus remedy to pursue his constitutional rights if he faces barbaric treatment or death. Johnson v Mathews, supra at 686.

The second jurist, Justice Douglas of this court, in his dissenting opinion in Sweeney, not only echoed Judge Bazelon's dissent, but candidly stated his constitutional and humane objections to the holding of Sweeney.

"I rebel at the thought that any human being, negro or white, should be forced to run a gamut of blood and terror in order to get his constitutional rights. That is to great a price to pay for the legal principle that before a state prisoner can get federal relief he must exhaust his state remedies."

The attitude of Arkansas and some other states toward their prisons appears to be that we are trying to correct the problems, just give us time; they're not all that bad. The Constitution cannot afford to be bent, relaxed, or ignored. The court in Ramos v Lamm, 485 FS 122, 168, expressed Respondent's position on this point:

"As I said in ruling from the bench, the Constitution does not permit cruel and unusual punishment today on the theory that somewhere down the line it might be corrected. To quote from Judge Henley's landmark decision in Holt v Sarver, 309 FS at 383, 'the handwriting is on the wall, and it ought not to require a Daniel to read

it'". The Holt case was the first decision in Arkansas, 10 years ago, declaring the system unconstitutional. It remains so today.

Petitioner discusses the need for comity among states, the interests of justice in prosecuting fugitives, and the certainty that inmates will flee across state lines and be protected, if this court denies his petition. Petitioner never comes to grips with the fact that if the penal system of Arkansas only, only meets constitutional standards, no relief would be available to Respondent. Is it so much to ask that a state comply with those minimal standards, to insure a fugitive's constitutional rights, just as the state is required to insure those of its free citizens? I suggest that a prisoner is a captive recipient of unlawful conditions: He may not merely move to another area. The constitutional rights of a citizen must be held paramount, and those inalien-

able rights protected.

CONCLUSION

WHEREFORE, Respondent, JAMES DEAN WALKER, respectfully requests that the Petitioner's petition be denied.

Respectfully Submitted,

R. W. Geandrot

ROBERT W. GEANDROT

DATED: 9-8-80